REMARKS

Summary

This Amendment is responsive to the Office Action mailed on March 29, 2004. Claims 1-24 are pending in the application.

Claims 1-24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ozkan (U.S. 5,838,686) in view of Rostoker et al. (U.S. 5,446,726) in further view of Wang et al. (U.S. 6,167,084). Regarding claims 2-3, 20, and 23, Official Notice has been taken. Claims 6-9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ozkan (U.S. 5,838,686) in view of Rostoker et al. (U.S. 5,446,726) in further view of Wang et al. (U.S. 6,167,084) and Kaye et al. (U.S. 6,259,733). Claim 15 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ozkan (U.S. 5,838,686) in view of Rostoker et al. (U.S. 5,446,726) in further view of Wang et al. (U.S. 6,167,084) and Rackman (U.S. 5,614,954).

Applicant respectfully traverses these rejections in view of the foregoing amendments and the comments that follow.

Discussion of Wang et al.

Applicant respectfully submits that the Wang et al. patent and the present application are commonly owned by General Instrument Corporation. Motorola, Inc. and General Instrument Corporation are the assignees of the Wang et al. patent. General Instrument Corporation is wholly owned (100%) by Motorola, Inc. General Instrument Corporation is the assignee of the present application. A copy of the Notice of Recordal Of Assignment for the present invention is attached for the Examiner's reference.

At the time the invention described in the present application was made, the present application and the Wang et al. patent were owned by, or subject to an assignment to, the same

entity. Further, the Wang et al. patent is potentially relevant only under 35 U.S.C. § 102(e)(2), since its issue date is subsequent to the filing date of the present application. Therefore, 35 U.S.C. § 103(c) prohibits the Wang et al. patent from being used as a reference against the present application. Accordingly, Applicant respectfully requests that the Wang et al. patent be removed as a reference against the present application (see, MPEP § 706.02(l)(2), et seq.).

Discussion of Kaye et al.

Applicant respectfully submits that the Kaye et al. patent and the present application are commonly owned by General Instrument Corporation. Motorola, Inc. and General Instrument Corporation are the assignees of the Kaye et al. patent. General Instrument Corporation is wholly owned (100%) by Motorola, Inc. General Instrument Corporation is the assignee of the present application. A copy of the Notice of Recordal Of Assignment for the present invention is attached for the Examiner's reference.

At the time the invention described in the present application was made, the present application and the Kaye et al. patent were owned by, or subject to an assignment to, the same entity. Further, the Kaye et al. patent is potentially relevant only under 35 U.S.C. § 102(e)(2), since its issue date is subsequent to the filing date of the present application. Therefore, 35 U.S.C. § 103(c) prohibits the Kaye et al. patent from being used as a reference against the present application. Therefore, Applicant respectfully requests that the Kaye et al. patent be removed as a reference against the present application (see, MPEP § 706.02(l)(2), et seq.).

Discussion of the Prior Art

The Examiner has acknowledged that the Ozkan reference does not disclose assigning channels based on complexity and the processors being transcoders as claimed by Applicant. The "complexity" in the claims of the present application is the measure of amount of computation (i.e., processor cycles) required to process the signal, whereas the "complexity" in the Ozkan reference is the measure of the amount of communication channel bandwidth (i.e., number of bits) required to transmit the signal. Moreover, processing cycles (e.g., the data requires a 2GHz Pentium processor to process) does not have a direct tie to communication bandwidth (e.g., the data requires a DSL line to transmit). Still further, each "processor" in the Ozkan reference system may only process one video channel. The system described in the present application is designed to process multiple channels of video on each processor.

The Examiner indicates that Wang et al. teaches that in order to accommodate pre-compressed program bit streams in a stat mux system, the corresponding rates have to be changeable which is attainable using a transcoder (Wang et al.: column 6, lines 43-49). However, the Wang et al. reference cannot be used to render Applicant's claims obvious since this reference is commonly owned as presented above. Therefore the prior art references of Ozkan and Rostoker et al. in combination fail to teach or suggest each and every element claimed by Applicant. Specifically, the combination of the Ozkan reference and the Rostoker et al. reference fails to teach or suggest, *inter alia*, that the processors comprise respective transcoders for transcoding the channels assigned thereto, as claimed in part at claim 1 and claim 24.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a *prima facie* case of

obviousness. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). Establishing a prima facie case of obviousness requires that all elements of the invention be disclosed in the prior art. *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970).

Applicants respectfully submit that the combination of the Ozkan reference with the Rostoker et al. reference does not teach or suggest each and every element of the claimed invention as set forth in the independent claim 1 or independent claim 24 as discussed above. Moreover, the combination of the Rostoker et al. and the Rackman et al. references does not remedy the defects of the Ozkan reference. Since the combination of the Ozkan reference with the Rostoker et al. reference and/or any of the other properly citable prior art of record fails to teach or suggest each and every claimed element, there is no *prima facie* case of obviousness.

If an independent claim is non-obvious under 35 U.S.C. 103, then any claim depending therefrom is non-obvious. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988).

In view of the above, Applicant respectfully submits that the claimed invention would not have been obvious to one skilled in the art in view of the combination of the Ozkan reference and the Rostoker et al. reference, or any of the other prior art references of record, taken alone or in combination. Moreover, since independent claim 1 is not obvious, this claim as well as each of claims 2-3 and 5-23 dependent thereon are believed to be allowable. Similarly, independent claim 24 is believed to be in immediate condition for allowance.

Further remarks regarding the asserted relationship between Applicants' claims and the prior art are not deemed necessary, in view of the above discussion. Applicants' silence as to any of the Examiner's comments is not indicative of an acquiescence to the stated grounds of rejection.

Withdrawal of the rejections under 35 U.S.C. § 103(a) is therefore respectfully requested.

References

The References made of record (Published Patent Application U.S. 2002/0001343 to Challapali et al.; U.S. Patent No. 5,768,594 to Blelloch et al.; U.S. Patent No. 6,643,327 to Wang; U.S. Patent No. 6,298,090 to Challapali et al.; U.S. Patent No. 6,493,388 to Wang; U.S. Patent No. 6,151,362 to Wang; U.S. Patent No. 6,181,742 to Rajagopalan et al.; and U.S. Patent No. 5,925,092 to Swan et al.) do not render the present application anticipated or obvious.

Conclusion

In view of the above, the Examiner is respectfully requested to reconsider this application, allow each of the presently pending claims, and to pass this application on to an early issue. If there are any remaining issues that need to be addressed in order to place this application into condition for allowance, the Examiner is requested to telephone Applicants' undersigned attorney.

Respectfully submitted,

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